



POLICE DEPARTMENT

March 14, 2008

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Police Officer Roger Charles  
Tax Registration No. 899037  
88 Precinct  
Disciplinary Case No. 83192/07  
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The above-named member of the Department appeared before me on November 13, 2007, charged with the following:

1. Said Police Officer Roger Charles, assigned to the 88 Precinct, while on-duty, on February 14, 2006, at approximately 1930 hours, while in the vicinity [REDACTED], Kings County, was wrongfully discourteous to a person, identity known to this Department, in that P.O. Charles said to this person "I told you to move your fucking car."

P.G. 203-09, Page 1, Paragraph 2 - DISCOURTESY TO CIVILIAN

2. Said Police Officer Roger Charles, assigned as aforesaid, at time, date and location set forth in Specification One, did wrongfully abuse his authority as a member of the New York City Police Department, in that P.O. Charles threatened to issue a summons to a person, identity known to his Department, without sufficient evidence that said person had committed a parking violation.

P.G. 203-10, Page 1, Paragraph 4 - ABUSE OF AUTHORITY

The Department was represented by Katie O'Connor, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that Randolph Saint-Leger and [REDACTED] own a three-story brownstone at [REDACTED], Brooklyn. On February 14, 2006, a day when about nine inches of snow clogged the streets, Saint-Leger was having renovation work performed inside [REDACTED] by Anointed Construction and Design ("Anointed"), a remodeling company run by his brother-in-law, Reverend Fernando Hill. Brandon Elliott, an employee of Anointed, was performing the renovation work under Hill's direction.

Saint-Leger's SAAB four-door sedan was parked some distance up the street from [REDACTED]. Hill's truck was parked on the street near the front of [REDACTED] (A photograph of the curb area in front of [REDACTED] was entered into evidence as Respondent's Exhibit A). At about 7:30 p.m., since Hill was about to drive his truck home, Hill asked Elliott to move Saint-Leger's SAAB into the parking spot that Hill was about to vacate. Elliott drove Saint-Leger's SAAB down [REDACTED], a one-way street. When he reached [REDACTED], he pulled the SAAB up next to the side of Hill's truck in a double-parked position and waited there for Hill to come out and move his truck.

The Department's Case

The Department called Brandon Elliott, Reverend Fernando Hill and Randolph Saint-Leger as its witnesses.

Brandon Elliott

Elliott, who is now a minister, testified that he kept the SAAB's engine running as he waited "a minute or two" for Hill to come out of [REDACTED] and move his truck so that Elliott could move the SAAB into the parking spot occupied by the truck. As he waited, he looked in his rearview mirror and saw a marked radio motor patrol car (RMP) with its lights on traveling down [REDACTED]. The RMP pulled up behind the SAAB and "sat there for a second." Elliott testified that he got out of the SAAB and walked over to the driver's side of the RMP. (The parties stipulated that the Respondent was the operator of the RMP). Elliott testified that as he was attempting to explain to the Respondent what he was doing and why he was double-parked, the Respondent told him that he needed to move the car. Elliot responded by asking the Respondent, "Can I have just one second? He is coming outside right now." Elliot testified that the Respondent then told him, "Move the fucking car." Elliot asserted that the Respondent spoke in "an aggressive tone uncalled for at that point in time."

The Respondent then stepped out of the RMP and began writing out a summons. Elliot repeated his request that he be allowed "to take one second until" Hill came outside that he be allowed "to wait there." He asked, "What is the problem?" The Respondent said nothing. Elliot testified that he felt "nervous" and "intimidated."

Elliot never yelled out to Hill to come outside but he testified that he tried to call Hill on his cell phone "a few times" to tell him to come outside but he got no response. Hill did eventually come outside. Hill approached Elliot and asked him what was going on. Elliott told Hill that the Respondent was writing out a parking summons regarding the

SAAB. Elliott heard Hill ask the Respondent, "Can we just have a second, one minute, to switch the cars around?" Elliot testified that the Respondent told Hill that he would be "getting tickets also." About five minutes passed between the time that the Respondent's RMP arrived and Hill came outside. Saint-Leger also came outside but Elliot did not hear him say anything to the Respondent. Elliot saw the Respondent hand one or more summonses to Saint-Leger.

Because Elliot felt like he was being "mishandled" by the Respondent, he asked the Respondent's partner, who had exited the RMP and was standing by the passenger side of the RMP, "What's the matter?" The partner responded by shrugging his shoulders. Elliot, Hill and Saint-Leger went to the precinct together to make a complaint against the Respondent. They were later interviewed by the Civilian Complaint Review Board (CCRB).

On cross-examination, Elliott acknowledged that the Respondent never touched him at anytime during this incident and that he was double-parked beside Hill's truck for up to three minutes before the RMP pulled up to within three feet of the rear of the SAAB. Elliott acknowledged that right after the RMP pulled up behind the SAAB, he saw that the RMP's lights were flashing and he heard a "woo, woo" sound emanate from the RMP. Elliott testified that he did not consider the flashing lights and the "little siren sound" he heard to be a signal to him that the police officers in the RMP wanted him to immediately move the SAAB. He testified that another reason why he did not move the SAAB forward was because doing this could "be conceived as evading the police." He further testified that he believed that as long as he was seated in the driver's seat of the

SAAB with the engine running, he was legally permitted to be double-parked beside Hill's truck.

When he was asked if he believed that the Respondent's initial order to him to move the SAAB was an illegitimate order, he answered, "If he didn't understand what I was doing, yes." When he was asked if he had believed that he was required to immediately move the SAAB after the Respondent told him to move it, he answered, "no," because he could see that the front door to [REDACTED] was open and that Hill was "on his way out of the house" to move his truck out of the parking spot. Elliot agreed that he felt he had been "mishandled" by the Respondent because he did not grant Elliot the courtesy of allowing him to remain double-parked until he and Hill could switch cars in the parking spot. When he was asked if he had refused to move the SAAB after the Respondent had told him to move it, he testified that he "didn't just refuse to move it," rather, he "didn't have an opportunity" to move it because the Respondent "was already writing a ticket."

Elliot acknowledged that he told CCRB that during this incident, "I almost feared for my safety because there had been some terrible things that cops had done to people like Diallo and Louima." Elliott told CCRB that because he, Hill and Saint-Leger were "church-going, God fearing people," the Respondent should not have abused them or issued summonses to the SAAB. Elliot further acknowledged that after a CCRB investigator explained to him that he had the option of pursuing a mediation with the Respondent, he told the CCRB investigator, "I don't care about his side of the story because, you know, his side of the story has no merit." Elliot also acknowledged that he told CCRB that the Respondent might possibly have a drug problem. When Elliot was

asked how he had reached this conclusion about the Respondent, Elliott cited “the way he was acting” and “his body language” during this incident.

Reverend Fernando Hill

Hill, a licensed minister who is the pastor of the Antioch Baptist Church, testified that [REDACTED] to Randolph Saint-Leger and that they own [REDACTED]. Hill recalled that when he came outside to move his truck so that Elliott could move the SAAB into the parking spot occupied by the truck, he saw the Respondent standing with Elliott. He approached the Respondent and told him, “I’m a minister.” The Respondent asked him, “Is minister on your birth certificate?” Hill attempted to dissuade the Respondent from issuing summonses to the SAAB. Hill testified that the Respondent then threatened to issue summonses to him by saying, “I’ll write you a ticket also. The more you talk the more tickets I’m going to write.” Hill testified that based on the Respondent’s “anger” he considered the Respondent “dangerous.”

On cross-examination, Hill acknowledged that he came outside before Saint-Leger did. Hill could not recall at what point Saint-Leger came outside. When Hill came out, he saw the Respondent was standing with Elliott. Hill never heard any curse words. The Respondent was writing out summonses, but he had not yet issued them. Hill testified that he may have asked the Respondent, “Is it really necessary to give tickets officer?” Hill asserted that the summonses the Respondent issued to the SAAB were “improper,” but that Saint-Leger paid them anyway. Hill told the CCRB investigator who interviewed him, “I expected a little better” of the Respondent “because I told him I’m a minister and a person would normally treat me with respect,” but the Respondent had

given him “the cold shoulder” by ignoring him. Hill testified that the Respondent “was rude and abused his power by threatening to give me tickets I didn’t deserve.” When he was pressed as to what the Respondent had said to him that Hill perceived as threat, Hill testified that the Respondent had told him something to the effect of “if you keep talking, I will give you a summons.”

Randolph Saint-Leger

Saint-Leger, who is employed in market research, testified that when he came outside, he heard Hill tell the Respondent, “I’m Reverend Hill.” The Respondent asked Hill, “Is that what it says on your birth certificate?” Hill asked the Respondent not to issue summonses to the SAAB. The Respondent then told Hill, “I can give you a ticket. Do you want a ticket too?” The Respondent said nothing else to Hill and the Respondent said nothing at all to Saint-Leger. Saint-Leger described the Respondent as angry and not interested in hearing anything that Hill had to say to him. Elliott told Saint-Leger that the Respondent had ordered him to “move the fucking car.”

On cross-examination, Saint-Leger testified that Elliott told him that he had gotten out of the SAAB and approached the RMP. Saint-Leger acknowledged that when he was interviewed by CCRB he was asked, “What did you hear him (the Respondent) say specifically?” Saint-Leger admitted that he told CCRB that he had heard the Respondent tell Elliott to “get out of the fucking car.” Saint-Leger further admitted that he told CCRB that Hill was present when the Respondent uttered the word “fucking” to Elliott. When Hill was asked if he had been fabricating when he told CCRB that he had personally heard the Respondent use the word “fucking,” he answered, “not necessarily,”

although Saint-Leger acknowledged that he was only repeating to CCRB what Elliott had told him.

### The Respondent's Case

The Respondent called Police Officer Ali Walker as a witness and testified in his own behalf.

### Police Officer Ali Walker

Walker, who has been assigned to the 88 Precinct for the past six years, testified that on February 14, 2006, he was on duty, in uniform, assigned to patrol duties within the 88 Precinct as the recorder in a marked radio motor patrol car (RMP) partnered with the Respondent who was serving as the operator. Walker, who described his recollection of this "routine" event as "very vague." He did recall that as they drove down [REDACTED], they observed a double-parked car and pulled up behind it. The driver got out of the car, walked over to the RMP and asked, "What's the problem?" Walker heard the Respondent tell the driver two times to move the car. Both times, the driver responded, "Why?" He never heard the Respondent say "move the fucking car." Walker got out and waited by the RMP as the Respondent issued summonses. A man came out of [REDACTED] and asked what was going on. The Respondent never threatened to issue a summons to the man.

On cross-examination, Walker recalled that he heard the Respondent tell the man who came out of [REDACTED] that the car was double-parked.



The Respondent

The Respondent testified that on February 14, 2006, he was on duty, in uniform, assigned to patrol duties within the 88 Precinct as the operator of a RMP partnered with Walker who was serving as recorder. The Respondent recalled that as he drove down [REDACTED], he observed a SAAB sedan double-parked blocking the street. The Respondent pulled his RMP up to the rear of the SAAB and he "hit" the RMP's manual "siren horn" to signal to the driver of the SAAB that he had to immediately move the SAAB. The driver, who the Respondent later learned was Elliott, did not move the SAAB. The Respondent told Elliott to move the car because he was double-parked and he was also blocking a fire hydrant. The Respondent told Elliott "about three times" to "move the car." The Respondent testified that he never told Elliott to move the "fucking" car. When Elliott still did not comply, the Respondent got out of the RMP and began writing two parking summonses, one because the SAAB was double-parked and one because it was blocking the fire hydrant.

A man then came out of [REDACTED]. When the Respondent asked him who he was, the man responded, "I'm Minister Hill." The Respondent testified that because he "wanted him to properly ID himself," he asked Hill, "Is that the full name on your license?" Hill "kept on asking why" the Respondent was issuing summonses to the SAAB. The Respondent did not respond to Hill's questions. The Respondent testified that he never threatened to issue any summonses to Hill and that he was not aware that the SAAB was double-parked next to Hill's vehicle.

On cross-examination, after having his recollection refreshed by reference to the transcript of his interview at CCRB on April 20, 2006, the Respondent acknowledged

that when he was writing the parking summonses for the SAAB, Hill had asked him, "Is this necessary?" and "Don't you have anything better to do?"

### FINDINGS AND ANALYSIS

It is charged that the Respondent was wrongfully discourteous to Elliot in that he allegedly told him, "I told you to move your fucking car."

Initially, it must be noted that one of the Respondent's patrol duties on this day when nine inches of snow was clogging the streets was to insure that cars were not stopping in the street in a manner that might even partially block a road and hinder an emergency vehicle, such as a fire truck or an ambulance, from moving quickly down the road. It is not disputed that Elliot pulled the SAAB up next to Hill's truck on a one-way street in a double-parked position and stopped. As a result, the Respondent had a duty to order Elliot to immediately move on and, when Elliott did not promptly comply with his order, the Respondent had the requisite legal authority to issue summonses for any parking violations he observed. The Department does not dispute that the summonses the Respondent issued to the SAAB were lawful and proper.

Since neither Hill nor Saint-Leger was present when the Respondent ordered Elliot to move the SAAB, the only testimony offered by the Department to prove that the Respondent uttered the word "fucking" in addressing Elliot was Elliot's own testimony. I find that Elliot's testimony does not constitute credible evidence sufficient to meet the Department's burden of proof.

I find that Elliot was disingenuous when he asserted that he did not interpret the flashing lights on the RMP and the manual siren warning as signals to him that he had to

immediately move the SAAB, and when he asserted that another reason he did not move the SAAB was because doing this could “be conceived as evading the police.” I also find that Elliot was disingenuous when he testified that he truly believed that as long as he was in the SAAB with the engine running, he was legally entitled to be double-parked; that he truly believed that the Respondent’s order to move the SAAB was illegitimate because the Respondent did not understand what Elliot was trying to do; and that he truly believed that he was not required to comply with the Respondent’s order to move on because Hill was on his way out of the house to move his truck out of the parking spot.

I also reject Elliott’s claim that he never had an opportunity to comply with the Respondent’s order to move the SAAB because he acknowledged that after he walked over to the RMP and was told by the Respondent to move the car, instead of immediately returning to the SAAB and driving it up the street, he continued to argue that he should be allowed to remain double-parked until Hill came outside.

Also, I find that Elliot engaged in hyperbole when he told CCRB that during this incident he “almost” truly feared for his safety. Nothing Elliott described the Respondent as doing or saying would have caused Elliott to actually fear for his personal safety.

Finally, I find that Elliott revealed a certain spitefulness when he tried to make trouble for the Respondent by telling CCRB that he actually believed that the Respondent might be a drug user. When Elliot was asked how he could make such a serious allegation after such a brief interaction, he could only lamely assert that he had reached this speculative conclusion based on his perception of the Respondent’s actions and his body language. Certainly this spurious allegation raises serious questions about his motivation and credibility.

It is also charged that the Respondent abused his authority by threatening to issue a summons to Hill without sufficient evidence that Hill had committed a parking violation.

Hill's claim that the Respondent threatened to issue a summons to him even though his vehicle was legally parked, must be examined in light of his testimony that he considered the Respondent "dangerous" and that the summonses issued to the SAAB were improper. I find that Hill's testimony does not constitute credible evidence sufficient to meet the Department's burden of proof because he exaggerated when he testified that based on what he perceived as the Respondent's "anger," he concluded that the Respondent was a "dangerous" police officer. Also, although Hill acknowledged that by the time he came outside the Respondent was already standing outside his RMP writing on a summons form and Hill had no personal knowledge of what had transpired before that, Hill, nonetheless, adamantly asserted that he was certain that the Respondent had improperly issued summonses to the SAAB. Hill's complaint against the Respondent must also be scrutinized in light of the fact that it was his fault that his sister's car received summonses, because he had not been outside ready to move his truck when Elliot pulled the SAAB up next to his truck.

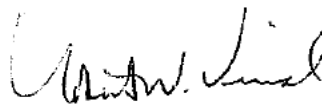
As to Saint-Leger, I cannot credit any of his testimony because he admitted that during his CCRB interview he falsely claimed that he personally heard the Respondent utter the word "fucking" while addressing Elliott. Saint-Leger testified at this trial that Elliott had told him that he was outside the SAAB before the Respondent said anything to him. Saint-Leger also testified that his only knowledge that the Respondent had used the word "fucking" was because Elliott told him the Respondent had said this. However, on

cross-examination, Saint-Leger admitted that he told his CCRB interviewer that he had personally heard the Respondent tell Elliott to "get out of the fucking car."

In sum, the testimony of the three witnesses called by the Department did not sufficiently meet the Department's burden of presenting credible evidence which proves these charges by a preponderance of the evidence.

The Respondent is found Not Guilty.

Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner - Trials

**APPROVED**

SEP 01 2008

RAYMOND W. KELLY  
POLICE COMMISSIONER

